IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7050 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KASAM ISMAIL MIYANA

Versus

POLICE COMMISSIONER

Appearance:

1. Special Civil Application No. 7050 of 2003

MR NISHITH P THAKKAR for Petitioner No. 1

MR RC KODEKAR AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/07/2003

ORAL JUDGEMENT

The present petition has been filed by the petitioner - detenu challenging the detention order passed by the detaining authority. The detenu has been

detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by order dated 31/1/2003 passed by the Police Commissioner, Rajkot City and he has been declared as "bootlegger".

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he/she cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned counsel for the petitioner and also perused the material on record. According to learned counsel for the petitioner, the detaining authority has passed the detention order on 31/1/2003 relying upon the six offences registered against the detenu under Prohibition Act and statement of two witnesses. He has mainly argued that the petitioner has made a detailed representation to the concerned authority on 5/3/2003 which has been received by the authority on 6/3/2003 and the same has been rejected on 12/3/2003 and thereafter, the same is communicated to the detenu accordingly. Therefore, according to the learned counsel for the petitioner, there is a delay in deciding the representation and communicating the decision of the representation to the petitioner, which is unconstitutional. In support of the submission, the learned counsel for the petitioner has placed reliance upon the decision of the Hon'ble Supreme Court reported in AIR 1981 SC 1126, in which the Honourable Supreme Court has held as under :-

> "We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

4. Since the detaining authority has not decided the representation of the petitioner and not communicated the

decision of the representation of the petitioner promptly, in view of the above judgment relied upon by the learned counsel for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned counsel for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The order of detention dated 31/1/2003 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik